

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1217

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
P/S

Docket No. 76-1217

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

VICTOR IADAROLA, GRACE HELEN IADAROLA
and BENITO IADAROLA,

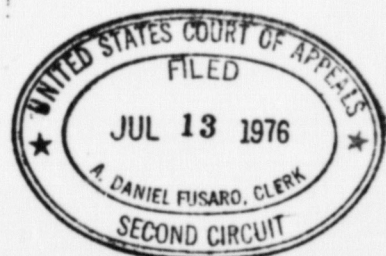
Defendants-Appellants.

On Appeal from the United States District Court
For the Southern District of New York

APPENDIX IN BEHALF OF
APPELLANTS VICTOR IADAROLA
GRACE HELEN IADAROLA and
BENITO IADAROLA

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1 mcds

7

2 put on its witnesses and, if they are so advised, the
3 defendants may put on witnesses. They do not have to.
4 They have no obligation to do so. The fact that they do
5 not do so cannot be held against them. You must consider
6 throughout the trial the evidence on direct examination and
7 the evidence which is developed on cross-examination.

8 After that point in the trial the government
9 will sum up and the defendants may sum up. It depends on
10 what their view of the evidence is.

11 Keep in mind all throughout that no matter what
12 is said by counsel, or by the Court, that is not evidence.
13 The evidence comes from the witnesses and the documents,
14 not from anything that counsel say or the Court says.

15 Your recollection of what is said by a particu-
16 lar witness controls throughout.

17 Mr. Levitt.

18 MR. LEVITT: Thank you, your Honor.

19 Your Honor, members of the defense, Mr. Blackman,
20 ladies and gentlemen of the jury:

21 My name is, as you know, Edward Levitt and I
22 have the privilege here today of representing the government
23 in this matter which is now before you. You, as the triers
24 of the fact, now control this trial. What will occur short-
25 ly and what I am doing now is making the opening statement

mcds

8

of the government. After opening statements, the facts and evidence as adduced through the witnesses' testimony will be presented to you. At the end of the trial counsel will have an opportunity to speak to you and tell you what counsel believe the facts and the evidence show. That is only an aid to you. It is your judgment which counts. After that, the judge will instruct you as to the law to be applied, and you will deliberate.

B2 Now, the indictment in this case contains three counts, a conspiracy count, a count charging possession and attempts to pass and sell counterfeit Treasury bills and one count of delivering these counterfeit Treasury bills.

When you hear the evidence it will be through a series of witnesses and documents. They will have two forms, direct evidence and circumstantial evidence. At the end of this trial the judge will explain to you exactly what I mean by direct evidence and circumstantial evidence. So that you may be able to follow what I mean now, let me simply give you a brief illustration.

THE COURT: No, Mr. Levitt.

MR. LEVITT: Yes, your Honor.

Much, but not all of the evidence of the case will be circumstantial evidence.

MR. ABRAMS: I am going to object to a character-

1 mcds 9
2 ization of the kind of evidence he intends to prove. I
3 don't believe an opening statement is for that.

4 THE COURT: His characterization, as far as
5 I'm concerned, is harmless. I will not let him explain it
6 because that is my problem.

7 MR. ABRAMS: Yes. Thank you.

8 MR. LEVITT: The government's proof will show
9 that these three defendants, Victor, Grace and Benito
10 Iadarola had access to counterfeit \$100 thousand Treasury
11 bills and that a co-conspirator of their's, an individual
12 by the name of Lew Marcus, who used the name Lewis Rubin,
13 thought he had found a buyer for these counterfeits. The
14 defendants attempted to sell these bills to their buyer
15 at the Waldorf Astoria Hotel on March 31, 1975. They failed
16 but not because of anything they did. They failed because
17 the person Marcus contacted concerning these bills was an
18 informant for the government, a convicted felon who was
19 cooperating and supplying information to the government,
20 and that informant told the Secret Service and the person
21 who the informant introduced as a buyer for these counter-
22 feits was a Secret Service agent acting undercover and
23 the meetings were carefully watched by the Secret Service
24 on March 31 and they never sold the bills, and they are
25 present here today.

1 mcds

10

2 In proving its case, the government will put
3 before you to testify, the informant, Chester Gray. You
4 will also hear the testimony of the undercover agent, a
5 fellow by the name of Paul Sweeney, as well as various
6 agents who surveilled the meetings on March 31, 1975, and
7 you will learn the results of those meetings. You will hear
8 from an expert who will testify to you and explain to you
9 how these bills were made and the counterfeit nature of
10 these bills.

11 This shall be the government's proof during the
12 trial.

13 It would be nice if the evidence at a trial
14 could come in as it happened in real life, first A happened,
15 then B happened, then C happened. Usually it doesn't work
16 out that way. Everybody attempts to present that evidence
17 to the jury in a nice, simple way, but witnesses know
18 different things about something that occurred at different
19 times, so to some extent the evidence may be a little
20 disjointed as it is presented to you.

21 But when the evidence is done, when you have
22 the testimony, you will have a complete picture. You will
23 know exactly what happened on March 31, 1975. You will
24 know all the circumstances.

25 I shall speak to you again after all the

mcds

11

evidence is in in summation. At that time I will review what I believe the evidence shows. The judge will then tell you what the law is. This then is the opening statement of the government. When you begin your deliberations I believe you will find that the evidence is clear and that as 12 reasonable people you will use your common sense, apply the law to the facts and return a verdict of guilty against the three defendants. Thank you.

MR. EVSEROFF: I have an application. I would like to make at the side bar.

MR. ABRAMS: Yes, I would like to join in that application.

(At the side bar.)

MR. EVSEROFF: If your Honor please, I, at the conclusion of the government's opening, on behalf of my client, I respectfully move to dismiss the indictment on the grounds that the government, as a matter of law, has failed to state a prima facie case as to any of the counts of the indictment against my client in his opening.

MR. ABRAMS: I join in that application, your Honor. I point out to the Court that were the government to prove everything that Mr. Levitt stated in his opening, that would not make it a prima facie case. Therefore, I urge your Honor to dismiss the indictment.

1 mcds

2 MR. COHEN: I would make a similar motion in
3 behalf of the defendant Benito Iadarola.

4 THE COURT: All are denied.

5 MR. EVSEROFF: I respectfully except.

6 (In open court.)

7 THE COURT: Do the defendants wish to make open-
8 ing statements?

9 MR. ABRAMS: Yes, your Honor.

10 MR. EVSEROFF: Yes, your Honor.

11 THE COURT: In the order of naming in the indict-
12 ment, Mr. Abrams is first.

13 MR. ABRAMS: Yes.

14 Mr. Blackman, ladies and gentlemen of the jury,
15 my name is Frederick Abrams and I represent the defendant
16 Mr. Victor Iadarola in this case. That is Mr. Victor
17 Iadarola sitting at the counsel table.

18 Now, as his Honor pointed out to you and as
19 Mr. Levitt has told you, what you have heard up until this
20 point is not evidence in this case. Nothing that Mr. Levitt
21 has said is anything but what he intends to prove. I am
22 not going to go into the facts of this case because as the
23 attorney for the defendant it is not our duty nor our obli-
24 gation to prove anything in this case. It is the govern-
25 ment's burden to prove their case beyond a reasonable doubt

mcs 8

Gray - direct

1 MR. EVSEROFF: I respectfully object on the
2 ground that it would be an extrajudicial statement not under
3 oath, not subject to cross-examination. It hasn't been
4 established that this was a conversation held in the course
5 of the conspiracy and therefore binding upon another
6 alleged co-conspirator not even present.
7

8 I respectfully submit that this record is
9 devoid of any evidence of conspiracy and I respectfully
10 object to any such alleged conversation unless and until
11 the time comes that the Government establishes the fact of
12 any conspiracy.

13 MR. COHEN: I join in that motion asserted by
14 counsel without making my own separate motion.

15 THE COURT: I am going to overrule the objection.

16 Q Please state the conversation, Mr. Gray.

17 A Mr. Rubin asked me if I could dispose of several
18 million dollars of Government securities that he was going
19 to receive from someone out of the Federal Reserve Bank;
20 that they would not be reported missing or stolen for a
21 number of months, and he asked me if I could get him 50 per
22 cent of the price for the securities, and I told him I
23 would probably be able to and he said we can get the first
24 delivery of \$2 million but I would have to raise \$100,000
25 in cash in order to get the transaction started.

1 mcs 30 Gray - direct

2 supplying information to the Government?

3 A Oh, about 10 years.

4 Q Have you ever received any compensation for
5 supplying the Government with information?

6 A Yes.

7 Q Did you receive any compensation for supplying
8 the Government with information in this case?

9 A Yes, I did.

10 Q What did you receive in this case?

11 A \$1500.

12 MR. LEVITT: Government moves Government's
13 Exhibit 2 for identification, the picture which has been
14 identified, into evidence, your Honor.

15 THE COURT: Show it to counsel.

16 MR. EVSEROFF: We have seen it, Judge.

17 MR. COHEN: We have seen it.

18 I would respectfully object to that. It is
19 totally irrelevant as to Benito Iadarola, totally unconnected,
20 never mentioned, never discussed in any way.

21 MR. ABRAMS: I have the same objection on behalf
22 of Victor Iadarola. No connection whatsoever.

23 MR. EVSEROFF: I object to it as irrelevant
24 with respect to my client, your Honor.

25 THE COURT: I am going to overrule the objections.

1 mcs 13 Gray - direct

2 A I told Mr. Sweeney then, again in person, what
3 happened, what transpired between Mr. Rubin and myself,
4 and Mr. Sweeney then asked me if I could call Mr. Rubin and
5 tell Mr. Rubin that I have the \$100,000 available to
6 negotiate the security transaction, at which time I went
7 to the telephone and I called Mr. Rubin.

8 Q Where was Mr. Sweeney when you called Mr. Rubin?

9 A Mr. Sweeney was standing alongside of me.

10 Q Where was the telephone?

11 A Like this, next to his ear and my ear.

12 Q Where was Mr. Sweeney standing?

13 A Next to me.

14 Q On the same side as you were holding the tele-
15 phone?

16 A Yes.

17 Q Please state what occurred when you called Mr.
18 Rubin?

19 A Well, Mr. Rubin's answering service answered
20 and she asked if I would leave my name and phone number and
21 he'd --

22 MR. EVSEROFF: I object as to the answering
23 service, if it please the Court, as irrelevant, immaterial,
24 hearsay, what he said to the answering service.

25 THE COURT: That is the same objection.

1 mcs 14 Gray - direct

2 MR. ENDEROFF: He is testifying to some person
3 other than the agents.

4 THE COURT: I agree.

5 You have the same objection same ruling, each
6 one.

7 Q Please continue?

8 A I left my name and phone number at the restaurant
9 and she said Mr. Rubin will phone me up, back, as soon as
10 she reaches him.

11 Q While you were at the restaurant that day,
12 did you receive a telephone call?

13 A Yes, I did.

14 Q Did you answer it?

15 A I was paged and I answered it.

16 Q When you answered it, where was Mr. Seeney?

17 A He was standing alongside of me, again listening
18 to the telephone conversation.

19 Q Who was calling?

20 A Mr. Rubin.

21 Q Please state the conversation?

22 A Well, I told Mr. Rubin "I'm here with someone
23 at the restaurant who has available a hundred thousand
24 dollars in cash to go ahead with the transaction that we
25 discussed earlier that day," and he said, "Fine," he'll

1 mcs 15 Gray - direct
2 work out to have the securities delivered the following
3 day at one o'clock at the Waldorf Astoria at the Peacock
4 Alley, if we would meet there, and --

5 Q Did you agree?

6 A Yes, we agreed.

7 MR. COHEN: I object to that, "we agreed," your
8 Honor.

9 THE COURT: Yes.

10 Did you agree?

11 THE WITNESS: I agreed.

12 Q Did that meeting occur the following day?

13 A No, it didn't.

14 Q What happened?

15 A I called Mr. Rubin that morning to verify if
16 the transaction would take place that day and he wasn't
17 that sure, and I had something else to do on that day, so
18 we agreed to postpone it until the following Monday.

19 Q At what time?

20 A The same time, one o'clock, same place.

21 Q At one o'clock that following Monday, where were
22 you?

23 A I was at the Waldorf, at the Peacock Alley.

24 Q Were you sitting at a table or were you standing?

25 A No, I was sitting at a table.

183

41 mcsr

Sweeney - direct

He apologized, Rubin did, for being late and there was general discussion at the table, just general conversation about traffic and the weather, small talk. I don't believe we had been seated more than five minutes when Rubin noticed somebody in the lobby of the Waldorf Astoria Hotel that he recognized. He stood up from the table and excused himself and walked into the lobby of the Waldorf Astoria Hotel and greeted this individual. They shook hands and the individual was a white male, approximately 50 years of age, wearing a camel hair coat, and they exchanged conversation for just two or three minutes, and then they walked through the lobby of the hotel out of sight.

Q Please look around the courtroom and state whether that person whom you saw Mr. Rubin meet is present here today.

A No, he is not.

MR. ABRAMS: Your Honor, at this time I am going to object to this line of testimony. I can't see the relevance of this at all. How is that relevant to the issues in this case, as to who he met, the description of him? I ask that it be stricken.

THE COURT: I won't strike it and I will overrule your objection. I am going to listen to the

185

43mcsr

Sweeney - direct

himself. He had seen somebody that he knew.

He looked at Chester and asked Chester if our money was at the hotel, and Chester replied that it was, that we had \$50,000 at the hotel and after we had seen the securities and approved of them and wished to close on the deal we could make a phone call and have an additional \$50,000 delivered over to the Waldorf Astoria Hotel to close on the deal involving the securities.

He said, "Fine." He said that in view of the money being at the hotel he would now have to call his people and tell them that we were ready to deal; that our money was at the hotel, and they in turn would bring the securities.

I shouldn't say securities. The word that was always used was Governments. They would bring the Governments over to the Waldorf Astoria Hotel and we would be able to close on the deal.

Q Then what happened?

A With this Rubin got up from the table and told me he was going to place a phone call to his people and with this he walked away from the table and walked to the lobby of the Waldorf Astoria Hotel.

Q Did you see where he went?

A No.

44 mcsr

Sweeney - direct

Q Did he ever return?

A Yes, he did.

Q What happened when he returned?

A I think it was approximately ten minutes later he returned to our table in Peacock Alley and seated himself and told me that he was sorry about an earlier comment that he had made to us in that he had earlier said that, "Since your money was at the hotel I'll take your word for it and call my people," and he told us then that he was sorry he had made that comment, "I'll take your word for it," because he had been instructed by his people to physically take a look at it or take a look at our money at the hotel; that they directed him not to take our word for it; that he was to physically look and if possible count the money; that he wasn't to take our word for it.

With this he said, "I'm going to have to take a look at your money."

I said, "Fine." I said, "It is downstairs in the safety deposit box section in the Towers or the Waldorf Astoria Hotel," the Towers being a rather fashionable section of the Waldorf Astoria Hotel, and with this Rubin and I got up from the table and walked through the lobby in the direction of the elevators that

187

45 mcsr

Sweeney - direct

that serviced the Waldorf Towers.

Q Did Mr. Gray come with you?

A No, Mr. Gray remained seated at the table in Peacock Alley.

Q What happened next?

A We got on the elevator and as we got on the elevator Rubin took from his pocket a stack of bills and was counting out some money to himself and he made the comment to me, "Gee, I think that guy that I just met in the lobby paid me \$1,700 instead of \$1,600."

When the elevator hit the ground level of the Towers where the safety deposit boxes were, he finished counting and said, "No, that is my mistake. He did give me \$1,600."

When the elevator doors opened we got out of the elevator and I walked over with Mr. Rubin to the safety deposit boxes and took a key from my pocket and opened up Box 696 and in Box 696 there was \$50,000 in Government funds and Rubin's eyes lit up and he took a couple of stacks from the safety deposit box and thumbed through it like that. They were tied up with rubber bands. He said, "Good." He said, "Good, now that I have seen it," he said, "I can't count it all here." He said, "Not right here." He said, "I'll take your word that the

188

46 mcsr

Sweeney - direct

amount is correct." He said, "Now I can call my people and tell them I have actually seen the money."

With this he put the stacks back into the safety deposit box. I closed up the box and put the key back in my pocket and we went back to the elevators and took the elevator back, I think one floor, to the main lobby of the Waldorf Astoria Hotel.

Q Do you know who put this money into the safety deposit box?

A Yes, I do.

Q Who did?

A Myself and another agent earlier that morning.

Q What if anything occurred when you reached the lobby of the Waldorf?

A We walked back over to the table in Peacock Alley and were joined by Chester Gray at the table.

Q Did anything further occur at that table?

A Well, we sat down. There was a general conversation. He said that now that he had seen the money that he would call his people and tell them that he had seen the money.

He also stated that he was taking or going to take a room at the Waldorf Astoria Hotel and that we would exchange room numbers with one another; that another

1 47 mcsr Sweeney - direct

2 further transactions we had to do we could do over the
3 telephone, the house phones, and he requested Chester Gray
4 to accompany him to the lower level to get a bite to eat
5 and instructed me to go back up to my room and, you know,
6 wait for a phone call.

7 Q What happened?

8 A We paid our bill at the Peacock Alley, left
9 the table and I went over to the elevators and went up to
10 my room and Chester Gray and Rubin walked through the
11 lobby of the hotel and out of my eyesight.

12 Q What room were you in?

13 A 35A-3.

14 Q Who had rented that room?

15 A The Secret Service earlier that day.

16 Q Had they rented any other rooms that day?

17 A They had rented the room directly nextdoor to
18 that, which is 35A-4.

19 Q To your knowledge, who occupied Room 35A-4
20 that day?

21 A Agents of the Secret Service and some members
22 of the New York City Police Department.

23 Q Do you remember the names of any of the agents?

24 A Special Agents Jim Heavey, John Vezaris,
25 George Rogers, Guy Caputo and Joe Bergeman and two members

191

1

49 mcsr

Sweeney - direct

2

MR. ABRAMS: I respectfully except.

3

Q Please state the conversation.

4

A I don't recall the question.

5

Q When Chester Gray came into the room you stated that there was a conversation which occurred. What was said?

6

7

8

9

10

11

12

13

Q What next happened?

14

A I believe there was a phone call to my room.

15

Q Who answered the phone?

16

A Chester Gray did.

17

Q Did you hear the party on the other side of

18

the phone?

19

A No.

20

Q Did you hear Chester Gray's part of the

21

conversation?

22

A Yes, it was a short conversation.

23

Q Please state it.

24

A He addressed the party as Lew and I believe

25

he said, "I'll be right down." It was just a short.

1 50 mcsr Sweeney- direct
2 conversation. It was very short.

3 Q Then what occurred?

4 A It was getting kind of late and I told Chester,
5 I said, "Go downstairs and find out why the delay."
6 I said, "Push him." I said, "Make him call his people.
7 Find out what the delay is. If you can get a phone number,
8 fine. If you can't, listen in the conversation as much
9 as you can. Just push him. Just learn as much as you
10 can downstairs," and with this he left my room.

11 Q What next occurred?

12 A I sat there in the room for a while and there
13 was a knock -- the next -- there was a knock on my door
14 and I asked who it was and it was again Chester Gray,
15 and I let him in and he came in and we sat down and
16 talked.

17 Q Please state that discussion.

18 MR. EVSEROFF: Objection.

19 THE COURT: You have a continuing objection.

20 MR. EVSEROFF: The reason I made this one
21 is that it was a different conversation.

22 THE COURT: I understand.

23 Q Please state what that conversation was.

24 A He came into the room and he said, "I just --
25 I was just with Lew and I got him to place a phone call

1 mcs 21

Gray - direct

2 the room?

3 Q What did you say?

4 A I told him I'd be right down.

5 Q What happened after you hung up the phone?

6 A Well, I went downstairs to see him.

7 Q Who was in his room?

8 A He was there by himself.

9 Q What occurred?

10 A Well, I asked him, you know, how quickly before
11 the securities get to the hotel. He said, "Just a
12 moment, let me make a telephone call."

13 Q Did he make a call?

14 A Yes, he did.

15 Q Did you hear the party on the other end of the
16 phone?

17 A No, I didn't.

18 Q Did you hear Mr. Rubin's part of the conversation?

19 A Yes.

20 Q Please state that?

21 A He asked for Grace. Then he asked for Benny,
22 and then he asked for Victor.

23 Q Then what happened?

24 A He listened and he hung up and he said, "The
25 bonds will be here shortly."

1 MCS 22 Gray - direct

2 Q What did you do then?

3 A Well, then he asked me to go back up to Mr.
4 Sweeney's room and await for another telephone call.

5 Q Did you?

6 A Yes, I did.

7 Q When you got to Mr. Sweeney's room, what occurred?

8 A Well, I told Mr. Sweeney of the telephone call
9 that he made and the conversation that he had.

10 Q Then what happened?

11 A Then we waited for another telephone call.

12 Q Did one come?

13 A Yes.

14 Q Who answered the phone?

15 A I did.

16 Q Who was on the phone?

17 A Mr. Rubin.

18 Q What did he say?

19 A He said he'll be right up.

20 Q Did he come up?

21 A Yes, he did.

22 Q Who answered the door?

23 A I did.

24 Q Please state what happened when Mr. Rubin came
25 into the room?

51 mcsr

Sweeney - direct

to his people to find out what the delay was."

I said, "Did you get the phone number?"

He said, "No." He said he made the phone call.

He said, "I couldn't hear the party on the other end.

After dialing the phone he asked to speak to Grace and

then he said 'Well, is Benny or Victor there?'"

And Chester told me "Then there was a short conversation and he hung up," and the next thing is that Rubin, Lew Rubin turned to Chester in the room and said that, "The securities will be -- the Governments will or the securities will be here shortly; that Grace is in motion."

Q Did anything further occur that day?

A Yes, there was -- I believe there was another phone call to my room.

Q Who answered the phone?

A Chester did .

Q Did you hear the party he was speaking to?

A No, I didn't.

Q Did you hear his side of the conversation?

A Yes, it was -- again another short conversation.

He addressed the party as Lew and he said, "Okay, Lew,"

and hung up. It was a -- the only thing I could make out

was that he addressed the party as Lew.

194

52 mcsr

Sweeney - direct

Q What occurred after that conversation?

A There was a knock on my door and I told Chester to go to the door and see who it was. He asked who it was and the party outside said, "Lew."

Chester opened up the door and Lew Rubin walked in.

Q Please state what occurred when Mr. Rubin walked into the room.

A He came in and he was all apologies for the delay and he was sorry that things had taken so much time. He told me, he said, "There has been a slight change in plans"; that instead of the original \$2,000,000 deal that we were supposed to close on that day his people had only delivered two pieces to the hotel and that he had been instructed by his people that there were only going to be a two-piece deal today involving the securities and that his people wanted me to front or advance to them \$20,000 of my money for the two pieces, and he stated that the additional eight pieces making up the first million would be available by noontime the following day, which was a Tuesday, and he said I could have the second million on Wednesday, which would be the third day.

In other words, he said that for me to get the \$2,000,000 and for us to close on a \$2,000,000 deal

195

53 mcsr

Sweeney - direct

it was going to take three days. It was going to be piecemeal, two pieces today, eight pieces by noontime the following day and the final ten pieces on the third day. He said his people were downstairs in his room and this is the specific instructions they had given him, that there was going to be no \$2,000,000 today, that they wanted \$20,000 for the two pieces and that there was no way they were going to change their minds.

I think, I believe he had made some comment to me that they had been burned before and this was the only they were going to do business; that it wasn't going to be the whole package in one shot.

Well, I became kind of upset at this. I said --

MR. ABRAMS: Objection to that, Judge.

THE COURT: What is your objection?

MR. ABRAMS: I object to the fact that he became upset.

THE COURT: Yes, it may be stricken. The jury is to disregard it.

A I told him, I says, "These are not the arrangements we made." I said, "We had arranged for a \$2,000,000 delivery today," and that my people were standing by waiting for a phone call to deliver an additional \$50,000 to the hotel. I said, "This is quite a change in

196

54 mcsr

Sweeney - direct

plans." I said, "They are going to be very upset at this."
I asked him if he had any -- I said, "I haven't even seen
the Governments we are talking about yet," and I asked
him to show me a sample.

He said, "Fine, I've got one with me," and he
reached into his coat pocket and took out a \$100,000
Treasury bill and handed it to me. I examined the bill
and determined the bill to be counterfeit.

MR. ABRAMS: I object to that. There has been
no foundation laid for that testimony.

THE COURT: Overruled.

Q Please continue.

A After he showed me the first piece and I
determined that it was counterfeit, I then asked him for
the second piece. I told him I wanted to see the second
bill. He said he didn't have it. I asked him where it
was and he said that his people were holding that bill
down in his room. He said in no way were they going to
release both pieces at once.

"They instructed me to bring one piece up and
show it." If I liked it and wanted to see the second
piece I was to bring or Rubin was to bring the first piece
back to his room and get the second piece from his people,
but they were not going to release both pieces at once."

0 197

1 55 mcsr

Sweeney - direct

2 Well, I told him that this was a change in
3 plans and that we are not -- this was not the plan we
4 had set up, and I told him that I didn't think my people
5 were going to go for this kind of a deal.

6 He told me this is the only way his people were
7 going to do business; that there was going to be no
8 changes at all. If I wanted it I could have it. If not,
9 that they just weren't going to do business any other
10 way.

11 Well, I told him that I would have to call my
12 people and see how they wanted to handle this, and I
13 asked him to leave the room while I made a phone call to
14 see if they were interested in doing business this way,
15 tell them about the change in plans, so he said, "Fine,
16 fine."

17 I believe I kept -- Yes, I kept the Treasury
18 bill in my possession and I told him to leave the room
19 while I made a phone call.

20 Q Did he leave?

21 A Yes, he did.

22 Q Did you make a phone call?

23 A Yes, I did.

24 Q Who did you call?

25 A I called the room nextdoor, 35A-4, to talk to

1 56 mcsr

Sweeney - direct

2 the supervisor in the room.

3 Q Who is that?

4 A Jim Heavey.

5 Q Did you speak to him?

6 A Yes, I did.

7 Q Please state that conversation.

8 MR. EVSEROFF: Objection.

9 MR. ABRAM Objection, your Honor.

10 MR. COHEN: Yes, your Honor, objection.

11 THE COURT: Overruled. You have a continuing
12 objection.

13 Q Please state the conversation.

14 A I told him, I said, "Jim," I said, "this is the
15 situation." I said, "All we have right now is one
16 Treasury bill. It is counterfeit." I described it to
17 him.

18 I said, "Rubin is out in the hallway. The most
19 we can get today is two, two pieces." I said, "He doesn't
20 even have both pieces with him. He has shown me one. he
21 said the other piece is being held by his people who are
22 waiting down in his room."

23 I said, "We've got to make a decision one way
24 or the other, I guess." I said, "If I give him back the
25 piece I'm holding now and he is at all suspicious we are

CC 199

57 mcsr

Sweeney - direct

liable to lose the piece and lose him also."

I suggested that we take what we could get, the one counterfeit \$100,000, the treasury bill. Take Rubin and go down to his room, Room 810 and see who his people were holding the additional piece.

He agreed, and it was decided to return the one piece I was holding to Rubin and instruct him to go back down to his room and bring the second piece back, and as he did this they would place him under arrest.

1 mcds Heavey - direct 426

2 Sweeney, working in an undercover capacity. There was
3 another individual named Mr. Chester Gray and a third
4 individual, Mr. Lewis Rubin.

5 Q Please tell the jury what happened when you met
6 Mr. Rubin.

7 A I, along with the other agents -- I identified
8 myself to Mr. Rubin. I told him he was under arrest and took
9 him into custody.

10 Q Then what happened?

11 A He was brought into room 35A-4 which was the
12 command post and searched.

13 Q By whom?

14 A By Special Agent Rogers and Special Agent Caputo.

15 Q Where were you when this search occurred?

16 A I was observing it.

17 Q In the room?

18 A Yes, sir.

19 Q What, if anything, was found on Mr. Rubin's
20 person?

21 A There was a \$100 thousand Treasury bill found
22 on his person. There was a key to room 810 found on his
23 person. There was a wallet with cash and other personal
24 affects.

25 Q I show you what has been marked in evidence as

1 mcds Heavey - direct 427
2 Government Exhibit 12 and ask you if you recognize it?
3 A Yes, sir, I do.
4 Q What is that?
5 A This is the key that was taken off of Mr. Lewis
6 Rubin after his arrest.
7 Q After you searched Mr. Rubin, what happened?
8 A I proceeded down to room 810 in the Waldorf
9 Astoria Hotel with several agents.
10 Q Do you know their names?
11 A Yes, it would have been Special Agent John
12 Vezeris, Special Agent Joe Bergeman, Special Agent Gregory
13 Derkasch, Detective Joseph Gannon and Detective Michael
14 Marino of the New York City Police Department.
15 Q What happened when you arrived at that room?
16 A I put the key in the door and we entered.
17 Q What key?
18 A This key to room 810, his key.
19 Q When you entered room 810, did you find anyone
20 present?
21 A Yes, sir, the three individuals present.
22 Q Please look around the courtroom and state
23 whether the people you found in room 810 on that date are
24 present here today.
25 A Yes, they are.

1 mcds Heavey - direct 428

2 Q Please describe the people and point them out.

3 A The lady dressed in the green dress and scarf

4 was in the room.

5 MR. EVSEROFF: Indicating Mrs. Grace Iadarola.

6 THE COURT: Yes.

7 A The man in the blue suit with the white shirt

8 and blue striped tie.

9 MR. ABRAMS: Indicating Mr. Victor Iadarola.

10 THE COURT: Yes.

11 A The gentleman in the brown suit with the white

12 shirt and multi-colored tie was also in the room.

13 MR. COHEN: Indicating the defendant Benito

14 Iadarola.

15 Q When you entered that room, where did you observe

16 the defendants?

17 A Mrs. Iadarola was laying on the bed. Mr. Benito

18 Iadarola and Victor Iadarola were seated at the foot of

19 the bed in two chairs.

20 Q What happened when you entered the room?

21 A We entered the room, announced ourselves and

22 placed the three individuals under arrest.

23 Q Then what happened?

24 A Mr. Benito Iadarola and Mr. Victor Iadarola were

25 searched for weapons first.

1 mcds

Heavey - cross

493

2 Q How many agents did you see with guns in their
3 hand?

4 A I was the first one in the door, so I had my
5 gun in my hand. I didn't see anybody behind me, but I
6 presume they had their guns in their hands.

7 Q So is it a fair assumption to say that Agent
8 Vezeris had his gun drawn?

9 MR.LEVITT: Objection..

10 THE COURT: Sustained.

11 Q When you opened that door did you rush in?

12 A Correct.

13 Q Where did you rush with your gun drawn?

14 A I went in and announced: "Federal agents. You
15 are all under arrest." Grabbed Mr. Benito Iadarols, placed
16 him under arrest, under custody.

17 Q When you ran in, opened the door with your gun
18 drawn, I assume your fellow agents came in behind you; is
19 that correct?

20 A Yes, they came in behind me, yes.

21 Q Where was Victor Iadarola at that time?

22 A He was seated at the foot of the bed.

23 Q Seated in the chair at the foot of the bed?

24 A Yes, sir.

25 Q And you ran immediately over to Benito Iadarola;

1 . mcds

2 out of the chair, as you have told us, did you say anything
3 to Grace that time about getting up off the bed?

4 A Yes, I directed her off the bed.

5 Q What did you say to her?

6 A Exactly?

7 Q To the best of your recollection.

8 A I directed her off the bed.

9 Q You made it clear to her that you wanted her
10 off the bed?

11 A That is correct.

12 Q That is, I assume, because you wanted to search
13 the bed?

14 A I wanted her in a position where -- you know,
15 I wanted to see her hands primarily.

16 Q Did you?

17 A At that time.

18 Q Did you see her hands?

19 A Yes.

20 Q I think you testified on direct examination that
21 after you directed her off the bed she went over and she
22 sat down on a dresser that was in the room?

23 A She was seated on a dresser.

24 Q She got up off the bed and she went over to the
25 dresser; is that right?

1 mcds

Heavey - cross

538

2 A She got up off the bed. The next time I saw
3 her she was on the dresser. My back was turned at that time.

4 Q How many agents were in the room as best you
5 recall?

6 A Seven or eight.

7 Q Did you say anything to her at that time?

8 A At which time?

9 Q When you directed her off the bed.

10 A I directed her off the bed.

11 Q Did you say anything else to her?

12 A No.

13 Q Now, as I understand your testimony, your direct
14 testimony, Mr. Heavey, there came a time when you directed
15 her to get off the dresser because you wanted to speak to
16 her; is that correct?

17 A That is correct.

18 Q When you directed her to get off the dresser,
19 she got off the dresser, didn't she?

20 A Yes.

21 Q She didn't resist?

22 A No.

23 Q There were no arguments?

24 A She got off the dresser.

25 Q You didn't find any counterfeit Treasury bonds

1 mcds Heavey - direct 466

2 A No, sir, I did not.

3 Q How high was that dresser, let's say, with re-

4 gard to the hight of the railing of the jury box?

5 A It would have been about the same height, maybe

6 a little higher. About the same height, a regular dresser

7 bureaup.

8 Q When Grace Iadarola went over to sit on the

9 dresser -- how many chairs did you observe in room 810?

10 A Three chairs in room 810.

11 Q At the time that Grace Iadarola got up off the

12 bed and went to sit on top of the dresser, how many chairs

13 were occupied?

14 A None of them were occupied.

15 Q You stated that you first interviewed Victor

16 Iadarola; is that correct?

17 A No, sir.

18 Q Who?

19 A Mr. Benito Iadarola was first interviewed by me.

20 Q Would you please state that interview the best

21 you recall it?

22 A I identified myself to Mr. Benito Iadarola and

23 told him why he was arrested.

24 MR. COHEN: I object to that as a conclusion.

25 I wish he would just tell us what he said.

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mcds

Heavey - direct

57

THE COURT: Tell us what you said.

A I advised him that he had a right to remain silent.

THE COURT: What he objected to was the fact that you said you told him why he was arrested. Tell us what you said to him as to why he was arrested.

THE WITNESS: Excuse me, your Honor. I told him he was arrested for conspiracy to sell a \$100 thousand Treasury bill. I told him he had a right to remain silent; that anything he said would and could be used against him in a court of law; that he had a right to have an attorney present during this interview and that he had a right to stop the interview at any time he so desired; that if he could not afford an attorney the government would provide him free of charge with an attorney.

I then asked him if he understood what I said.

Q What did he say?

A He said that he was illiterate; he couldn't read or write.

Q Please continue.

A I then advised him of his constitutional rights again; that he had a right to remain silent; that anything he said could and would be used against him in a court of law; that he had a right to stop the interview at any time;

1 mcds Heavey - direct 468

2 and that he had a right to have an attorney present and if
3 he couldn't afford an attorney the government would provide
4 him one free of charge.

5 Q Please continue.

6 A He again said he was illiterate. I asked him if
7 he understood what I had just told him. He stated he did.
8 I then asked him why he was in the room; who the room was
9 registered to and if he knew anything about any \$100 thousand
10 counterfeit Treasury bill.

11 Mr. Iadarola stated to me that he didn't know who was
12 registered in the room. He was merely in the room waiting
13 to collect some money that was owed his wife; that he just
14 came over for a ride. That is why he was there.

B11 15 I asked him if he knew a Lewis Rubin or a Lewis
16 Marcus. He stated he did not.

17 I asked him if he knew anything about a counterfeit
18 \$100 thousand Treasury bill. He stated that he did not.
19 At that time I terminated the interview.

20 Q Then what did you do?

21 A I left the room and went over to -- left the
22 bathroom and went over and spoke to Mr. Victor Iadarola.

23 Q Please state that conversation.

24 A I told Mr. Victor Iadarola what my name was.

25 I told him that he was under arrest for conspiracy to sell

1 mcds Heavey - direct 469
2 a \$100 thousand counterfeit Treasury bill; advised him that
3 he had a right to remain silent and that anything he said
4 would and could be used against him in a court of law; and
5 that he had a right to stop the interview at any time he
6 so desired; that he had a right to have an attorney present;
7 that if he could not afford an attorney the government would
8 provide him one free of charge.

9 I asked him if he understood what I just told him and
10 he said he did.

11 I asked him if he knew a Mr. Lewis Rubin or Mr. Lewis
12 Marcus. He stated that he did not.

13 I asked him if he knew anything about a counterfeit
14 \$100 thousand Treasury bill. He stated he did not.

15 I asked him who was the individual who was registered
16 in this room. He stated that he did not know.

17 At that time I proceeded to interview Mrs. Grace
18 Iadarola.

19 Q Where did you interview her in the room?

20 A It would have been away from Mr. -- it would
21 have been on the side of the room where the windows were,
22 away from --

23 MR. EVSEROFF: I respectfully object to the
24 characterization "would have been." May we know where it
25 was, your Honor?

mcds

Heavey - direct

470

THE COURT: Yes, where it was, please.

THE WITNESS: I interviewed her at the window-side of the hotel.

Q Was that where the dresser was located?

A No, sir. I directed her off the dresser to my side at the wall. I told her who I was; that she was arrested for conspiracy to sell a \$100 thousand counterfeit Treasury bill. I told her she had a right to remain silent; that anything she said could and would be used against her in a court of law; that she had a right to terminate the interview, stop the interview at any time she so desired; that she had a right to have an attorney present during the interview and that if she could not afford an attorney the government would provide her with one free of charge.

I also indicated that she would have a right to make a telephone call if she wanted to an attorney.

I asked her if she understood what I said and she said she did.

I asked Mrs. Iadarola if she knew anything about a counterfeit \$100 thousand Treasury bill. She stated that she did not. I asked her if she knew a Lewis Rubin or a Lew Marcus. She stated she did not.

I asked her what she was doing in the room. She said she was waiting to collect some money that was owed her.

mcds

Heavey - cross

504

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A That is correct.

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Q Concerning that same participation in this investigation, you, yourself, prepared no notes in connection with what you saw or what you did or what you heard?

6

A That is correct.

7

8

9

Q So that your testimony here is primarily from memory or from having had an opportunity to look at reports of other agents; is that right, Mr. Heavey?

10

A Correct.

11

12

13

14

Q I think you told Mr. Abrams that in that connection there was an agent by the name of Vezeris who did prepare a report and you gave him certain information which information, to your knowledge, he incorporated in his report?

15

A Correct.

16

17

18

Q You are the agent who is, I believe, in charge of the counterfeiting squad at the Secret Service; is that right?

19

A That is correct.

20

Q Do you know a man by the name of Chester Gray?

21

A I know Mr. Gray, yes.

22

Q How long do you know him?

23

24

A I have known Mr. Gray since 1967, 1968, somewhere around there.

B4 25

Q How did you happen to meet Mr. Gray, Mr. Heavey?

1 mcds

Heavey - cross

542

2 A Yes.

3 Q Do you remember these questions being asked of
4 you by Judge Werker and you making these answers at the bottom
5 of page 128, and these questions are by Judge Werker:

6 "Q And you wanted to speak to her? What did you
7 want to speak to her about? What did you say to her and
8 what did she say to you?

9 "A I directed her over to where I was, told her
10 who I was, told her she didn't have to say anything. If
11 she did it would be used against her in a court of law.
12 She had a right to stop being interviewed at any time she
13 desired. She had a right to have an attorney present during
14 the interview. If she couldn't afford one the government
15 would provide one free of charge.

16 "I asked her initially what she was doing in the room.
17 I asked her if she knew anything about a counterfeit
18 \$100 thousand Treasury bill which was found on an individual
19 named Mr. Rubin, and I believe during that time the bill was
20 found and I might have asked her about the bill, and I asked
21 her about an attache case which was at the foot of the bed
22 which also - which had documents in it.

B9 23 "Q Did she answer any of these questions?

24 "A She stated she didn't know anything about any
25 of the counterfeit Treasury bills. She didn't know Rubin

mcads

Heavey - cross

543

1 and she was merely in the room waiting to collect some money
2 that was owed her."
3

4 Do you remember Judge Werker asking you those questions
5 and you making those answers?

6 A Yes, sir, I do.

7 Q When you were questioned by Judge Werker with
8 respect to this you never mentioned to the Court that you
9 questioned her about Marcus, that you mentioned the name
10 Marcus, did you?

11 A That is right, counsel.

12 Q Now, you told us that you furnished information
13 to an agent by the name of Vezeris, which information was
14 incorporated into his report?

15 A Yes, sir.

16 Q And you told us, I think in answer to some
17 questions that you had an opportunity to look at Mr. Vezeris'
18 report previous to your testimony?

19 A Yes, I read all the reports.

20 Q I show you this report previously marked Govern-
21 ment Exhibit 3504 for Identification, part of the 3500
22 material, and I ask you to look at this report and tell us,
23 if you would, Mr. Heavey, is this Mr. Vezeris' report as
24 you understand it to be?

25 A Yes, sir, it is, dated June 22.

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mcds

Vezeris - cross

710

defendants denied knowing Lewis Rubin?

A That is correct, sir.

Q If you didn't hear Mrs. Iadarola say that, how did you become aware of the fact that she denied knowing Lewis Rubin?

A I was told by another agent present when preparing this report that transpired during the interview of Mrs. Iadarola.

Q Who told you that, what agent?

A I don't recall, sir. I'm assuming it was Agent Heavey since he questioned her.

Q You assume it was Agent Heavey?

A That is correct.

Q When Agent Heavey told you that she denied knowing Lewis Rubin, did he tell you that she denied knowing Lewis Marcus?

A I don't recall.

Q Do you recall whether he ever asked whether she knew Lewis Marcus?

A I don't recall.

Q Did you ever put that in your report at that time, that she denied knowing Lewis Marcus?

A Yes, it is reflected that all three defendants denied knowing Lewis Rubin.

1 mcds Vezeris - cross 711

2 Q Did you mention the name Lewis Marcus on that
3 page, Mr. Vezeris, anywhere?

4 A Repeat the question, please.

5 Q Did you mention on that page anything about
6 the defendants denying knowing Lewis Marcus at that point?

7 A No, sir, I did not.

B10 8 Q Do you have any recollection of whether Grace
9 Iadarola or Victor Iadarola or Benito Iadarola were asked
10 by anybody if they knew Lewis Marcus at that time?

11 A No, sir.

12 Q You found an attache case in the room; is that
13 right?

14 A That is correct, sir.

15 Q And do you have the attache case here with you?

16 MR. LEVITT: Do you want it now?

17 A Yes, sir, I do.

18 THE COURT: I think this would be a good time
19 to take a recess.

20 Ladies and gentlemen, the same admonition.
21 Don't discuss the case.

22 (The jury left the courtroom.)

23 THE COURT: Mr. Vezeris, don't discuss the
24 matter with anybody during recess.

25 THE WITNESS: Yes, sir.

1 mcds

Vezeris - direct

621

2 bed.

3 Q What had occurred from the time she was sitting
4 on the dresser to the time she sat on the chair which caused
5 her to be at that chair?

6 A We began our search of the room; other agents
7 and myself began a search of the room.

8 Q How did that affect her being on the dresser?

9 A I started to search the area of the bed, around
10 the bed, and around the dresser and when I got to the area
11 of the dresser she was asked at that time, when the inter-
12 view had begun by Agent Heavey, to move to the chair.

13 Q You said you couldn't recognize the substance
14 of the interviews by Mr. Heavey; is that correct?

15 A Yes, sir, it is.

16 Q What were you doing during that time period?

17 A I was searching the room. I was searching parts
18 of the room.

19 Q Where did you search?

20 A Again, the area around the bed and the bed itself
21 and the area round the dresser and the dresser it self.

22 Q Did you find anything in that dresser?

23 A Yes, sir, I did.

24 Q Where particularly in that dresser, sir, did
25 you find anything?

1 mcds Vezeris - direct 622

2 A In the top right-hand drawer of the dresser.

3 Q What did you find?

4 A I found a \$100 thousand Treasury bill.

5 Q What did you do with it?

6 A I showed it to Agent Heavey and it was later
7 marked for identification.

8 Q I show you what has been marked as Government
9 Exhibit 6 for Identification and I ask you if you recognize
10 that document?

11 A Yes, sir, I do.

12 Q How do you recognize it?

13 A By the initials and the date on the rear of the
14 document.

15 Q What is the date?

16 A The date is March 31, 1975.

17 Q Who put the date on it?

18 A I did, sir.

19 Q What are the initials?

20 A JV.

21 Q Who put those initials on it?

22 A I did, sir.

23 Q What is that document?

24 A This is the \$100 thousand Treasury bill that was
25 found in the dresser in room 810 of the Waldorf Astoria.

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mcads

Vezeris - cross

714

Q When you found this briefcase you opened it up, didn't you?

A Yes, sir, I did.

Q That was one of the things that you did in connection with your search of those particular premises; is that right, Mr. Vezeris?

A Yes, sir.

Q When you looked inside the briefcase very quickly you ascertained that this briefcase belonged to Lewis Rubin, didn't you?

A Yes, sir.

Q And you so ascertained because you found papers and documents and matter and material inside of this briefcase which indicated that it belonged to Lewis Rubin; is that right?

A That is correct, sir.

Q In addition to finding in the briefcase matter which belonged to Lewis Rubin, you found matter in the briefcase with the name Lewis Marcus on it, didn't you?

A Yes, sir.

Q Yesterday Mr. Levitt introduced in evidence a piece of papers that you found in the briefcase; do you remember that?

A Yes, sir.

mcds

Vezeris - cross

715

MR. EVSEROFF: Can I see that piece of paper,
Mr. Levitt?

MR. LEVITT: Yes, here it is.

Q This piece of paper which was introduced yesterday in evidence has got some writing on it; is that right?

A Yes, sir.

THE COURT: Let's identify it for the record.

MR. EVSEROFF: Yes, your Honor, this is Government Exhibit 8 offered in evidence as against Grace and Victor Iadarola but not against Benito Iadarola.

Q And this piece of paper which was put into evidence yesterday reads, "Grace H. Iadarola, 42 Berwin Avenue, Staten Island, New York"; is that right?

A I believe so.

Q Then it reads: "10314, 698-8699, 761-6488 (761-5154) Victor Iadarola, Brooklyn, New York."

Is that what it says?

A I believe so, sir.

Q Let me show you this, Mr. Vezeris, with the Court's permission.

A Yes, sir, that is correct.

Q You found that piece of paper in that briefcase which has been marked for identification?

A Yes, sir.

1 mcds Heavey - direct 475

2 A Yes, she did.

3 Q What did she state?

4 A She stated that she was pregnant. She stated

5 that on March 31 she received a call from Mr. Rubin that

6 he had some money for her; that in view of her pregnancy

7 she was accompanied by her husband and her brother-in-law,

8 Mr. Victor Iadarola, to the Waldorf Astoria.

9 Q I put before you what has been marked as Govern-

10 ment Exhibit 4 for Identification and I ask you to look at

11 it and please state whether you recognize it?

12 A Yes, sir, I do..

13 Q How do you recognize it?

14 A It has my initials on it.

15 Q Did you put those initials on it?

16 A Yes, sir, I did.

17 Q When, for the first time, did you see that piece

18 of paper?

19 A On March 31, 1975.

20 Q Where did you see it?

21 A When I took it out of the wallet belonging to

22 Victor Iadarola.

23 Q Without stating the substance of that document,

24 please state what it is?

25 A This piece of paper has names and numbers on it.

1 mcds Heavey - direct 476

2 Q Telephone numbers or just writing?

3 A To me it looks like a telephone number.

4 Q I show you Government Exhibit 5 for Identification

5 and ask you to look at it and state whether you recognize

6 it?

7 A Yes, sir, I do.

8 Q How do you recognize it?

9 A It has my initials and the date on it.

10 Q What is the date?

11 A March 31, 1975.

12 Q Did you place a date on that document?

13 A Yes, sir, I did.

14 Q Did you place your initials on that document?

15 A Yes, sir, these are my initials.

16 Q Where did you find that document?

17 A This was in the wallet of Victor Iadarola.

18 Q When did you find it?

19 A On March 31, 1975.

20 Q Please state what Government Exhibit 5 for Identi-

21 fication is.

22 A It is a blank check with an endorsement on it.

23 MR. LEVITT: The government moves Government

24 Exhibits 4 and 5 into evidence, your Honor.

25 MR. EVSEROFF: I respectfully object on the

mc ds

Vezeris - cross

729

1
2 Q And did you put in your report that she admitted
3 knowing Lewis Rubin on April 1st?

4 A Yes, I did.

5 Q At the time that she admitted knowing Rubin,
6 was Rubin in the field office too at that time?

7 A I believe he was.

8 Q Rubin had been with her or in her presence at
9 the 54 Street Precinct and at your field office the night
10 before; is that right?

11 A They were all at the precinct together. I
12 don't believe they were in each other's presence.

13 Q They were all there together and they were
14 all transported to your field office thereafter; right?

15 A That is correct.

16 Q What I'm getting at is that she saw him, didn't
17 she?

18 A I believe so.

19 Q When she was questioned initially in room 810
20 of the Waldorf, Rubin wasn't there; is that right?

21 A That is correct.

22 Q Did anybody ever ask Mrs. Iadarola in your
23 hearing and in your presence if she knew Lew Marcus by the
24 name of Lewis Rubin; did anybody ever ask her that?

25 A In my presence? No.

mcds

Heavey - cross

549

Q There came a time when she told you she was pregnant?

A She didn't tell me directly. I believe one of the agents who was processing said that this lady claims that she was pregnant and I believe I went in and asked her, "Is it true?" and made arrangements at the detention center which had to be notified.

Q Yesterday Mr. Levitt asked you about some questions which you put to her concerning pedigree.

A Personal background history.

Q Did you ask her how old she was?

A Date of birth.

Q What did she say to you?

A I don't recall what she said her date of birth was.

Q Did you ask her if she was married?

A Yes.

Q What did she say?

A She was.

Q Did she identify her husband?

A Yes,

Q Who was her husband?

A Benito, the gentleman in the blue suit.

Q Benny?

1 mcds Heavey - cross 550

2 A Yes.

3 Q Did you ask her if she had any children?

4 A Yes.

5 Q What did she say to you as to that?

6 A I believe she said she had three children.

7 Q Did she say she had three children and was expect-

8 ing a fourth?

9 A I don't recall.

10 Q And you asked her if she had ever been convicted

11 of a crime?

12 A I asked her if she had ever been arrested.

13 Q Did you ask her if she had ever been convicted

14 of a crime?

15 A Probably, yes.

16 Q Did she tell you that she had never been con-

17 victed of a crime?

B10 18 MR. LEVITT: Objection.

19 MR. EVSEROFF: This was brought out on direct

20 examination.

21 THE COURT: Go ahead.

22 A She stated she had never been convicted.

23 Q So that at all times, Mr. Heavey, Mrs. Grace

24 Iadarola denied any knowledge or participation in anything

25 having to do with these counterfeit notes; is that correct?.

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Heavey - cross

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A That is correct.

Q And you never saw her with any of these counterfeit notes?

A Correct, counsel.

Q And you never saw her put any counterfeit note in a dresser drawer while you were in the hotel room; is that right?

A That is correct.

Q And there were seven or eight agents and policemen in that room, approximately, at that time?

A Approximately.

MR. EVSEROFF: Your Honor, I have no further questions of this witness.

THE COURT: May I see the photographs?

MR. EVSEROFF: Yes.

CROSS-EXAMINATION

BY MR. COHEN:

Q Mr. Heavey, on the morning of March 31, 1975, are we to understand that a meeting took place in your office with regard to the preparation you were going to make for the subsequent events you hoped would develop on the 31st?

A Yes, there was a preliminary meeting there.

Q Did you partake in that meeting?

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2 that he questioned --

3 THE COURT: I am fully aware of what you are
4 going to say. He testified that he examined her in the
5 field office the following day, April 1st, and the only
6 testimony that we have on the record is with respect to the
7 testimony of Mr. Vezzeris who admittedly testified not from
8 independent knowledge but from his report, which was given
9 to him by several other agents, including Mr. Heavey.

10 What we are going to do at this time is take a
11 recess. Mr. Hughes, you can tell the jury that they can
12 have some coffee and we will come back and we will give you
13 a decision.

14 (Recess)

15 THE COURT: As in most of these cases, gentlemen,
16 and you know it, this is a very difficult decision to make
17 and, as I view the responsibility of the Court, it is the
18 Court's primary duty to decide whether the government has,
19 by a fair preponderance of the evidence, established suffi-
20 cient independent evidence to permit the introduction of the
21 hearsay evidence which I have accepted.

22 You have all made motions on the ground that a
23 prima facie case has not been established, but, of course,
24 that would depend, in my mind at least, upon whether the
25 hearsay evidence is admissible.

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Now, with respect to the one item which in my mind is crucial to the government's case, and that is the reported conversation with Mr. Rubin on March 31, I have come to the conclusion by reason of the testimony of Mr. Gray on page 21 of the direct examination in the record-- that is a left-hand number -- that Mr. Rubin's call from room 810 was in fact a verbal act. I have come to that conclusion for this reason:

It was Mr. Gray's testimony, in answer to a question, "What occurred?

"A Well, I asked, you know, how quickly before the authorities get to the hotel. He said, 'Just a moment, let me make a telephone call.'

"Q Did he make a call?

"A Yes, he did.

"Q Did you hear the party at the other end of the phone?

"A No, I didn't.

"Q Did you hear Mr. Rubin's part of the conversation?

"A Yes.

"Q Please state that.

"A He asked for Grace. Then he asked for Benny, and then he asked for Victor.

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"Q Then what happened?

"A He listened and he hung up and he said, 'The bonds will be here shortly.'"

Now, upon analogy to the Nuccio case, which is 373 Fed.2nd 168, I have decided that that in effect was a verbal act and is admissible certainly in this Circuit as such without more and without further proof.

Now, I'm also basing my decision in this matter with respect to each of the defendants that in the mind, at least of the Court, each of the persons who was asked for had some knowledge of the purpose of the call, which I think is a reasonable inference from the fact that each of those persons was asked for.

With respect to the additional items of what I consider to be independent proof, I do think that it is significant that Mrs. Iadarola climbed upon the dresser, specifically that portion of the dresser which contained in the top drawer the other bill, and I think it is a reasonable inference from the fact that she was in no way man-handled and not searched that she felt that she probably would not be told to get off the dresser at any time by the agents who entered the room.

I do not find with respect to Mrs. Grace Iadarola, and certainly not with respect to Mr. Benito Iadarola, that

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there was any false exculpatory statement. I do not think that has been shown. But with respect to Mr. Victor Iadarola, I think that that has been shown by the production of a slip of paper from his wallet which gave the name "Louis Rubin," Exhibit 4, and the blank check in the name of Lewis Marcus indicating that Mr. Victor Iadarola, at least, knew Mr. Rubin by his correct name as well as by the alias, Lewis Rubin.

I take the position with Mrs. Grace Iadarola that the introduction at the St. Regis was not such as would cause her to know Mr. Rubin by the name Rubin because Rubin was the person who introduced Mrs. Iadarola to Mr. Gray, according to the testimony. There would therefore be no reason for the name or the surname of Mr. Rubin - Marcus to have been mentioned at that particular moment.

As a matter of fact, the inference to be drawn by reason of the fact that Gray did not know Mrs. Iadarola's last name was that in all probability either her last name or Rubin's last name were not used at that particular time.

I don't find sufficient indication in the report with respect to Mrs. Grace Iadarola, or in the testimony I might say, that she was questioned at the headquarters on the evening of this occurrence, namely, March 31. As a matter of fact, I have a distinct recollection, though I do

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not have the testimony before me, that Mr. Heavey indicated that after he interviewed her at the hotel he terminated the interview and he did not thereafter interview her until April 1st, the following day, when she was brought from the House of Detention.

Based upon all of these bits and pieces, plus the fact that I am restricted to a rule in this court which says that when the facts lend themselves to two inferences, the one which is most unfavorable to the defendant should be adopted rather than, as in the state courts, where the one most favorable to the defendants should be adopted.

I am really finding that the length of time, the period of time during which the parties were in the hotel -- I'm talking now of Gray and Sweeney and Rubin -- leads me to the conclusion that he was indeed waiting for someone. Coupled with the telephone call, I think this is sufficient to introduce and to permit the case to go to the jury on the issue of the conspiracy and the other crimes charged in the indictment.

The motions are denied.

MR. EVSEROFF: I respectfully except.

MR. ABRAMS: I respectfully except.

MR. COHEN: I respectfully except.

MR. EVSEROFF: May we have a few minutes, Judge,

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2 MR. ABRAMS: I would.

3 MR. COHEN: I would too. In view of the fact
4 that there has been no proof to the contrary at all with
5 regard to Benito Iadarola that there was a false exculpatory
6 statement, if your Honor would charge as a matter of law
7 that there was never any proof of a subsequent conversation--
8 his testimony was that he denied knowing Lewis Rubin, period.
9 There has never been any showing at all to the contrary
10 that he never made any other statement or just been no proof
11 about that whatsoever.

12 THE COURT: Again, the real turning point in
13 my decision to give this to the jury was the fact that there
14 was a telephone call. Benny said he did not know him in the
15 hotel, fine, but when the conversation was had by Rubin
16 calling Grace, Victor or Benny there must have been some
17 reason in his mind for asking for Benny. This is for the
18 jury to determine, whether there was or was not a nexus there.

19 MR. EVSEROFF: And what the reason was.

20 THE COURT: Sure, what the reason was.

21 MR. EVSEROFF: Even more important.

22 THE COURT: That is for them to determine.

23 MR. COHEN: There has never been the slightest
24 showing of who answered the phone on the other side.

25 THE COURT: I agree with that.

1 elh 5

Heavey-recross

2 A That's correct, your Honor.

3 Q At what point did she get up? Was she sitting
4 on the bed?

5 A She was lying on the bed. I believe she was
6 facing the TV, where the window is.

7 Q When did she get up, when you came in?

8 A When I directed her. I directed her off the bed.

9 Q What did she do then?

10 A She got up off the bed. I was searching her
11 husband, which would have been Mr. Benito Iadarola at the
12 time. When I turned around she was seated on the dresser
13 behind me, on top of the dresser.

14 Q How high was that dresser? As high as the table?

15 A No, I'd say it was higher than the table.

16 Q No one was seated in that room when you walked in?

17 A Yes, sir.

18 Q Where were the people seated?

19 A Benito and Victor Iadarola were seated at the
20 foot of the bed on two chairs. Mrs. Iadarola was lying
21 on the bed. There was a chair I believe next to a desk
22 to the right of Mrs. Iadarola, that was unoccupied. But the
23 two chairs at the foot of the bed were occupied by Mr.
24 Benito and Mr. Victor Iadarola.

25 Q When you came in and said you were federal officers

1 elh6

Heavey-recross

2 and they were under arrest, did you tell them to get up?

3 A We picked them.

4 Q You picked them up and searched them at that
5 time?

6 A Yes.

7 Q How about Mrs. Iadarola?

8 A We didn't touch Mrs. Iadarola because of the fact
9 that she was a female.

10 Q When did she leave the dresser?

11 A When I directed her off the dresser, told her to
12 get off because I wanted to speak to her, so it would have
13 been exactly when, five or ten minutes after.

14 Q Was it after you had frisked both Mr. Iadarolas?

15 A Yes, sir.

16 Q When with respect to the time did she show any
17 reluctance to getting off the dresser?

18 A I told her to get off the dresser.

19 Q Did she get off?

20 A Yes, sir.

21 Q Without any hesitation?

22 A Yes, sir.

23 Q And you wanted to speak to her; what did you want
24 to speak to her about? What did you say to her and what
25 did she say to you?

1 elh 7,

Heavey-recross

2 A I directed her over to where I was, told her
3 who I was, told her she didn't have to say anything, if
4 she did it would be used against her in a court of law;
5 she had a right to stop being interviewed at any time she
6 desired; she had the right to have an attorney present
7 during the interview, and if she couldn't afford one the
8 government would provide one free of charge. I asked
9 her initially what she was doing in the room. I asked her
10 if she knew anything about a counterfeit hundred thousand
11 dollar Treasury bill which we found on an individual named
12 Mr. Rubin, and I believe during that time the bill was found,
13 and I might have asked her about the bill. And I asked her
14 about an attache case which was at the foot of the bed also
15 which had documents in it.

16 Q Did she answer any of those questions?

17 A She stated that she didn't know anything about
18 any of the counterfeit Treasury bills. She didn't know Rubin,
19 and she was merely in the room waiting to collect some money
20 that was owed her.

21 Q Who made the search of that dresser?

22 A Agent John Vezeris.

23 Q Do you know or did you observe him discover that
24 other Treasury bill?

25 A I observed him take it out.

1 elh 8

Heavey-recross

2 Q Where was it?

3 A It was in the drawer, the top drawer as you
4 are facing the bureau, would have been on the right-hand
5 side, the same side as Mrs. Iadarola was sitting on, on
6 the top drawer.

7 Q Were there two banks of drawers? Was there a
8 separation?

9 A I believe there was two banks of drawers, but
10 I'm not sure, your Honor.

11 MR. LEVITT: Your Honor, if I may be of some
12 assistance, the government intended to introduce it
13 at trial. I have a picture here that I think the witness
14 will be able to identify.

15 THE COURT: Ask him if he can identify it.

16 BY MR. LEVITT:

17 Q Do you recognize what that picture marked
18 Government's Exhibit S-1 for identification portrays, sir?

19 A Yes, I do, sir.

20 Q What is it?

21 A This is the interior of room 810 at the Waldorf-
22 Astoria Hotel.

23 Q Is this dresser in question shown in that picture?

24 A Yes, it is.

25 Q Is the drawer of that dresser denoted in that